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23. (Currently amended) The ~~aqueous composition~~ method according to claim 21-31 wherein said ~~magnesium~~ magnesium cation is included in said cooking water composition in ~~an amount~~ a concentration ranging from about 10 to about ~~35~~ 50 mg/L.

24. (Currently amended) The ~~aqueous composition~~ method according to claim 21-31 wherein said zinc cation is included in said cooking water composition in ~~an amount~~ a concentration ranging from about 0.10 to about 0.25 mg/L.

25. (Currently amended) The ~~aqueous composition~~ method according to claim 21-31 wherein said copper cation is included in said cooking water composition in ~~an amount~~ a concentration ranging from about 0.05 to about 0.20 mg/L.

26. (Currently amended) The ~~aqueous composition~~ method according to claim 21-31 wherein said salt-containing composition further ~~comprising~~ comprises an effective amount of at least one additional cation selected from the group consisting of sodium, potassium, iron, manganese, barium, chromium, boron, cobalt, molybdenum, nickel, vanadium, tin, mixtures thereof, and optionally, a heat resistant nutritional supplement.

27. (Currently amended) The ~~aqueous composition~~ method according to claim 26 wherein said additional cation is selected from the group consisting of iron, manganese or barium in an amount less than about 0.2 mg/L of said cooking water composition.

28. (Currently amended) The ~~aqueous composition~~ method according to claim 21-29 wherein said calcium cation ranges from about 50 to about 85 mg/L, said magnesium cation ranges from about 10 to about 35 mg/L, said zinc cation ranges from about 0.10 to about 0.25 mg/L and said copper cation ranges from about 0.05 to about 0.20 mg/L of said cooking water composition.

29-30. Cancelled.

31. (Currently amended) A method of cooking ~~feed~~ pasta comprising:
i. producing a cooking water composition by adding an effective amount of the ~~composition according to claim 1~~ a salt-containing composition comprising water soluble salts containing calcium, magnesium, zinc and copper cations to a sufficient amount of

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water to produce said cooking water composition such that the concentration of calcium cations in said cooking water composition ranges from about 5 mg/L to about 200 mg/L, the concentration of magnesium cations in said cooking water composition ranges from about 5 mg/L to about 100 mg/L, the concentration of zinc cations in said cooking water composition ranges from about 0.05 to about 0.50 mg/L; and copper cations at a concentration ranging from about 0.01 mg/L to about 0.30 mg/L;

- ii. heating said cooking water composition to cooking temperature;
- iii. exposing ~~food~~ uncooked pasta to the heated composition of step ii for a time sufficient to cook said ~~food~~ pasta; and
- iv. removing said ~~food~~ from said heated composition.

32-44. Cancelled.

REMARKS

After amendment, claims 21-28 and 31 remain pending in this application after cancellation of claims 1-20, 29-30 and 32-44. The present amendment has been made to remove all outstanding issues in the application and to expedite allowance of the present application. Applicants maintain that the instant response addresses all of the outstanding grounds for rejection imposed in the December 30, 2004 office action issued in the instant application and that each of the presently pending claims 21-28 and 31 are in condition for allowance. Claims 31 and 22-28 have been substantially narrowed from their original breadth in order to expedite allowance of this application. Method claim 31 has now been narrowed and is directed to a method for specifically cooking pasta, as opposed to any food using the composition which is set forth in claim 1, including all of the cations which appear in the claim 1. The remaining subject matter in the original has been cancelled in this application without prejudice, in order to avoid having to address the substantive issues the Examiner has raised. Support for the instant amendment can be found in the originally filed specification and claims and more specifically in original claim 1, claim 31, and claims 22-28, as well as in the specification on page 1, first paragraph, page 3, fifth full paragraph, page 6, third paragraph, page 7, second and third paragraphs, page 8, fourth full paragraph, page 10, page 11, page 12, first full paragraph,

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pages 13-20, especially include the examples on pages 15-20. Support for the amendment to claims 22 and 23 can be found in the specification at the bottom of page 3 (last line) and the top of page 4 (third line). No new matter has been added by way of this amendment.

The Examiner has maintained her rejection of originally filed claim 1-44 under 35 U.S.C. §103 for the reasons which are clearly stated in the office action. Applicants, having amended the claims to place them in condition for allowance, shall address the relevance of the Examiner's rejection below.

35 U.S.C. § 103(a).

Original claims 1-44 were rejected under Section 103(a) as being unpatentable as obvious in light of U.S. Patent No. 4,840,808 ("*Lee*") when taken in combination with U.S. Patent No. 5,447,732 ("*Tanimoto*"). The Examiner has maintained that there was a sufficient motivation, based on the level of ordinary skill in the art alone, to make the claimed invention by combining *Lee* and *Tanimoto*. According to the Examiner, it would have been obvious, in light of *Tanimoto*, to change the ingredients and physical state of *Lee*'s preservative compositions comprising magnesium, calcium, zinc, and copper to arrive at the claimed invention. Notwithstanding the Examiner's previous rejection, no cogent rejection based upon 35 U.S.C. §103 can be maintained.

Lee discloses that freshly harvested green vegetable color can be preserved and retained in finished pasta and macaroni products produced by the addition to semolina at a high pH of sufficient amounts of cations, alkaline and buffering substances in vegetable puree or reconstituted vegetable powder slurry. According to *Lee*, green vegetable matter is subjected by a dip or spray operation to an alkaline sodium or potassium containing solution wherein the pH is above 7.0. The color of the green vegetable matter is attributed to the presence of chlorophylls. *Lee* describes hydrolysis of methyl and phytol groups to produce deep green color chlorophyllins at a pH of 7.0 or above. The

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chlorophyllins produced from the hydrolysis of the methyl and phytyl groups of chlorophyll are added to alimentary paste to produce darkly colored pasta. In *Lee*, the pH of the pasta must be maintained above 7.0 and the water soluble chlorophyllins added to the alimentary vegetable paste contribute to the stable green coloration of the alimentary vegetable paste and pasta produced therefrom. Regardless of the merits of the Examiner's previous rejection, certainly *Lee* does not disclose or suggest that *uncooked pasta* is to be cooked in the manner according to the present invention.

In complete contrast to *Lee*, the instant invention comprises a method of cooking pasta using a solid and/or aqueous salt-containing composition which contains the set concentrations of the cationic ions of magnesium, calcium, zinc and copper which are set forth in the claims. *Lee* does not disclose or suggest a method for cooking pasta. The buffers or alkaline metallic salt solutions used in *Lee* are not used to cook pasta; they are instead used to preserve color and texture of vegetables which are incorporated into pasta during its manufacture. Further, *Lee* does not disclose the specific cations and cation concentrations used in the claimed invention. The other reference cited by the Examiner, *Tanimoto*, which discloses poly- γ - glutamic acid-containing compositions which evidence enhanced mineral absorption, does not teach or suggest the present method of cooking pasta using the specifically claimed composition containing the four cations in the claimed concentrations. *Tanimoto* does not disclose solid and/or aqueous salt-containing compositions which may be used to produce cooking water compositions for cooking pasta, nor does it disclose or suggest a method of cooking pasta according to the present invention. Indeed, if anything, *Tanimoto* discloses the inclusion of polymeric polypeptides as polyglutamates for purposes of adding to food to *minimize* or have relatively little impact on the flavoring of food. This reference certainly cannot be said to motivate one of ordinary skill to the present invention because the present method produces enhanced organoleptic qualities of the pasta which is cooked, a result found in complete contrast to the teachings of *Tanimoto*. Nor does *Tanimoto* provide any motivation to modify *Lee* to provide such compositions.

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Compared to the instant invention and each other, *Lee* and *Tanimoto* are disparate as they relate respectively to a particular way to make a food product (pasta) and a food product ingredient (supplement) that enhances mineral absorption upon ingestion. Neither reference discloses a method of cooking pasta using a solid and/or aqueous salt-containing compositions used to cook pasta.

The present law clearly supports the patentability of the instantly claimed invention. If the alleged obviousness of a claimed invention is based on a combination of references, there must be a rigorous showing of a clear and particular suggestion, teaching, or motivation to combine the references relied upon. *In Re Dembiczak*, 50 U.S.P.Q.2d 1614 (Fed. Cir. 1999). Such evidence may come from the references themselves, the knowledge of those skilled in the art, or from the nature of the problem to be solved. While this showing may come from the prior art, as filtered through the knowledge of one skilled in the art, *Brown and Williamson Tobacco Corp., Inc. v. Philip Morris Inc.*, 56 U.S.P.Q. 2d 1456 (Fed. Cir. 2000), it is still subject to the rigorous requirement that the combination not be motivated by impermissible hindsight. *In Re Dembiczak, supra*. Further, there must be a particular showing that one of ordinary skill in the art would have believed there was a reasonable likelihood of success that the suggested combination of references would work to yield the claimed invention. *Brown and Williamson Tobacco Corp, supra*. In the present case, Applicants respectfully submit that the Examiner's has not made out a cogent case for the rejection of the present application. Indeed, if anything, *Tanimoto teaches away*.

It is respectfully submitted that the instantly claimed invention, which has been amended to a method for cooking pasta, is patentable over *Lee* and *Tanimoto*. The Examiner's rejection fails to provide a rigorous showing of a clear and particular suggestion, teaching, or motivation to combine *Lee* and *Tanimoto* to yield the method of cooking pasta using the claimed cation-containing compositions which are set forth in claims 22-28 and 31. To the contrary, the Examiner's rejection should be withdrawn because the art is cited without any suggestion or motivation in the art of the presently

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claimed method. The Examiner's rejection is essentially inapposite to the present claims, inasmuch as she has taken overlapping cationic ranges in *Lee*'s food ingredient, applied *Lee* to a method of cooking as opposed to making a food product, and applied *Tanimoto*'s cationic ranges which essentially teach away from the present invention to deficient teachings of *Lee*. It is improper as a matter of law to select, modify and combine references, in essence to cherry-pick the disclosures, in this manner in the absence of clear evidence supporting the selection, modification, and combination. *In Re Dembiczak, supra*.

There is also no basis for the Examiner to characterize the instant invention as reflecting the mere addition or elimination of well-known food ingredients, or to suggest that the Applicants have only identified selected well known ranges of ingredients that are merely the result of "optimization". It is respectfully submitted that the Examiner's characterization misapprehends the claimed invention and the law. "[T]he criterion of § 103 is not whether the differences from the prior art are 'simple enhancements' [optimizations], but whether it would have been obvious to make the claimed [invention]." *Continental Can Company USA, Inc. v. Monsanto Co.*, 20 U.S.P.Q.2d 1746 (Fed. Cir. 1991). There is no lower threshold in establishing obviousness for food related inventions; a uniform standard precludes reliance on hindsight in evaluating the patentability of an invention irrespective of complexity. *Panduit Corp. v. Dennison Mfg. Co.*, 1 U.S.P.Q. 2d 1593 (Fed. Cir.), *cert. denied*, 481 U.S. 1052 (1987). Notwithstanding the clarity of the law on this issue, the present invention is real, and as set forth in the examples section of the present specification produces a cooked pasta product which exhibits high organoleptic qualities desirable in cooked pasta.

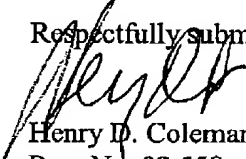
In light of all of the foregoing, it is respectfully maintained that the instant amendments and remarks address all of the grounds for rejection raised by the Examiner. Accordingly, Applicants respectfully maintain that pending claims 22-28 and 31 should be passed to issue.

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No fee is due for the presentation of the instant amendment. A petition for a one month extension is enclosed as is a notice of appeal. The Commissioner is authorized to charge deposit account 04-0838 in the amount of \$220 (small entity status applies to this application). Please charge any additional fee due or credit any authorized overpayment made to deposit account 04-0838.

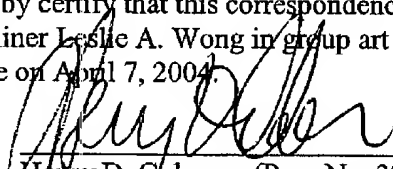
Respectfully submitted,


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Certificate of Facsimile Transmission

I hereby certify that this correspondence is being sent by facsimile transmission to Examiner Leslie A. Wong in group art unit 1761 in the United States Patent Office on April 7, 2004.


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